# Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of

Federal-State Joint Board on Universal Service

CC Docket No. 96-45

#### COMMENTS OF BELLSOUTH CORPORATION

BellSouth Corporation, on behalf of itself and its wholly owned subsidiaries ("BellSouth"), hereby submits its comments in response to the *Further Notice of Proposed Rulemaking* ("*Further Notice*") in the above-captioned proceeding.<sup>1</sup>

#### I. INTRODUCTION AND SUMMARY

On October 27, 2003, the Commission released an order in which it modified the high-cost universal service support mechanism for non-rural carriers and adopted several measures intended to induce states to ensure the reasonable comparability of rural and urban rates in areas served by non-rural carriers.<sup>2</sup> BellSouth supports the Commission's actions and believes that the order fulfills the directives of the Tenth Circuit.<sup>3</sup>

Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, FCC 03-249 (rel. Oct. 27, 2003) ("Order" and "FNPRM").

<sup>&</sup>lt;sup>2</sup> *Id.* 

<sup>&</sup>lt;sup>3</sup> See Owest Corp. v. FCC, 258 F.3d 1191 (10<sup>th</sup> Cir. 2001).

One of the new measures adopted by the Commission is an expanded rate review and

certification process. As part of the new support mechanism, states must certify annually that the

basic service rates in their rural, high-cost areas served by non-rural carriers are reasonably

comparable to a national urban rate benchmark or explain why these rates are not reasonably

comparable.4

In its companion Further Notice, the Commission seeks comment on a number of issues

related to the new rate review and expanded certification process. The Further Notice also seeks

comment on a proposal to further encourage states to preserve and advance universal service by

making available additional targeted federal support for high-cost wire centers in states that

implement explicit universal service mechanisms.<sup>5</sup>

BellSouth is encouraged by, and generally supports, the Commission's efforts to enhance

the universal service support mechanism for non-rural carriers by enticing states to achieve rate

comparability. BellSouth offers the following limited comments in response to the Further

*Notice*: (1) the Commission should not require all states to submit extensive rate data; and (2)

the Commission's proposed mechanism for additional federal support must be stringent enough

to ensure that the universal service fund remains "specific, predictable and sufficient," as

required by Section 254 of the Act.

*Id.* ¶ 2.

*Id*. ¶ 3.

47 U.S.C. § 254(b)(5).

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## II. THE COMMISSION SHOULD NOT REQUIRE ALL STATES TO SUBMIT EXTENSIVE RATE DATA.

The Commission should not mandate the submission of extensive rate data by all states. The Commission's new expanded rate review and certification process requires a state to file residential rate data for rural areas served by non-rural carriers in two instances: (1) if the rural rates exceed the nationwide urban benchmark or (2) if the state certifies that its rural rates are not reasonably comparable to urban rates nationwide, despite being within the safe harbor. The Commission asks a series of questions regarding the collection of additional rate data from the states, including whether all states should be required to submit rate data to the Commission; whether states should file data on business and residential rates; and whether to require data related to rates in non-rural areas served by non-rural carriers.

The Commission should not adopt a data collection requirement that imposes a reporting obligation on <u>all</u> states or requires the submission of extensive data (*e.g.*, business rate data; <sup>11</sup> rates in non-rural areas served by non-rural carriers <sup>12</sup>). As an initial matter, the Commission already requests and receives significant rate information from states. As the Commission points out, for the past 17 years, the Wireline Competition Bureau ("Bureau") has conducted an annual rate survey of local telephone rates in 95 urban areas. <sup>13</sup> In fact, the national urban rate

<sup>&</sup>lt;sup>7</sup> See Order, ¶ 90.

<sup>&</sup>lt;sup>8</sup> Further Notice, ¶ 109.

<sup>&</sup>lt;sup>9</sup> *Id.* ¶ 110.

<sup>&</sup>lt;sup>10</sup> *Id.* ¶ 111.

<sup>&</sup>lt;sup>11</sup> See Further Notice, ¶ 110.

<sup>&</sup>lt;sup>12</sup> See Further Notice, ¶ 111.

<sup>&</sup>lt;sup>13</sup> Order, ¶ 35 & n.130.

benchmark adopted by the Commission is based upon the most recent data collected by the Bureau in its *Reference Book*. <sup>14</sup> Thus, there is no need to duplicate or expand the current reporting mechanism. The Commission is already capturing reliable and sufficient state rate data.

Moreover, requiring the submission of rate data by all states would be administratively burdensome for not only states but the Commission as well. BellSouth believes it is appropriate to require rate information from states under certain circumstances (*e.g.*, where a state's rural rates exceed the nationwide benchmark; where a state has certified that its rural and urban rates are not reasonably comparable; <sup>15</sup> where a state is seeking additional federal support). However, to impose such an obligation on all states – regardless of whether they receive federal universal service support, are seeking such support, or have certified that they have achieved rate comparability – is overreaching. Moreover, the costs and burdens associated with such a requirement appear to outweigh any perceived benefits. Today, eight states receive federal non-rural high-cost support. It would be unnecessarily onerous to subject all 50 states to the time-consuming task of rate data collection when the overwhelming majority of the states fall outside the scope of the non-rural support mechanism. In addition, there is no need to saddle the Commission with the added responsibility of gathering and housing such data in the absence of a clearly defined need.

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<sup>&</sup>lt;sup>14</sup> *Id.* ¶ 80. See Paul R. Zimmerman, Industry Analysis and Technology Division, Wireline Competition Bureau, Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service (July 2003) ("Reference Book").

<sup>15</sup> *Order*, ¶ 90.

To the extent that the Commission deems it necessary to review data from all or some states, it can request such data on a case-by-case basis. However, there is no need to adopt a blanket rule that requires routine submission of extensive rate data by all states.

III. THE PROCESS FOR RECEIVING ADDITIONAL FEDERAL UNIVERSAL SERVICE SUPPORT MUST BE CLEARLY DEFINED AND STATE REQUESTS MUST BE SUBJECT TO RIGOROUS REVIEW.

Under the new high-cost support mechanism, states may request additional federal support, if necessary. A state must show that federal and state action together are not sufficient to achieve rate comparability. The *Further Notice* seeks comment on how to implement this new process, including among other things, what filing procedures to adopt as well as what showings a state must make to support its request. 17

BellSouth agrees that the "process should be as clearly defined as possible." Moreover, the Commission must seek to avoid the problems currently plaguing the ETC designation process. The rubber-stamping of applications seeking further federal action should not be the norm. The Commission has seen for itself in the ETC proceeding, how the lack of standards and a rigorous review process can place undue stress on the universal service fund and increase the size of the fund. Accordingly, the Commission must make certain that the mechanism for additional federal support is stringent enough to ensure that the universal service fund remains "specific, predictable and sufficient," as required by Section 254 of the Act.

<sup>&</sup>lt;sup>16</sup> *Id*.  $\P$  93.

<sup>&</sup>lt;sup>17</sup> Further Notice,  $\P\P$  114-132.

<sup>&</sup>lt;sup>18</sup> Order, ¶ 95.

<sup>&</sup>lt;sup>19</sup> 47 U.S.C. § 254(b)(5).

As such, BellSouth supports the Commission's proposal to require a state seeking additional federal support to make, at least, the following two showings: (1) a demonstration that rural rates in the service areas of non-rural carriers in the state are not reasonably comparable to urban rates nationwide, including an analysis of the rates in the basic service template and other relevant factors; and (2) a demonstration that the state has taken all reasonable actions to achieve reasonable comparability of its rural rates to urban rates nationwide, including the adoption of a state universal service fund and an explanation of how the requesting state has used any federal support currently received to achieve comparable rates.<sup>20</sup> These showings are reasonable and represent the bare minimum that a state should be required to demonstrate when seeking

BellSouth further agrees with the Commission's proposal "that a state that has not [adopted explicit mechanisms to support universal service] cannot be deemed to have taken all reasonably possible steps to support comparability within the state." States have an obligation to their constituents and should not be relieved of the obligation to take actions deemed necessary to promote universal service within their own borders. The federal government should not shoulder the entire burden of preserving and advancing universal service. States can and should play an integral role in ensuring that consumers in rural areas have access to telecommunications services at rates reasonably comparable to those charged in urban areas as required by the Act. If federal support is insufficient to achieve this goal, a state should establish its own universal service mechanism to supplement the federal funds received. If a

<sup>20</sup> See Further Notice, ¶ 117.

additional federal universal service support.

<sup>&</sup>lt;sup>21</sup> *Id.* ¶ 119.

<sup>&</sup>lt;sup>22</sup> 47 U.S.C. 254(b)(3).

state is still unable to achieve rate comparability through federal and state support, only then should it be able to seek additional federal relief. As noted by the Tenth Circuit, conditioning additional federal support upon the development of an adequate state universal service program is a reasonable way to induce state action.<sup>23</sup>

Respectfully submitted,

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January 14, 2004

<sup>&</sup>lt;sup>23</sup> See Qwest Corp. v. FCC, 258 F.3d 1191, 1204 (10<sup>th</sup> Cir. 2001).

### **CERTIFICATE OF SERVICE**

I do hereby certify that I have this 14<sup>th</sup> day of January 2004 served the following parties to this action with a copy of the foregoing **COMMENTS OF BELLSOUTH CORPORATION** by electronic filing and/or by placing a copy of the same in the United States Mail, addressed to the parties listed below.

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